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8 **BEFORE THE**
9 **CALIFORNIA BOARD OF ACCOUNTANCY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. AC-2012-21

13
14 **MARVIN LOUIS NICHOLLS**
15 **P.O. Box 93301**
16 **City of Industry, CA 91745**
17 **Certified Public Accountant Certificate No.**
18 **20478**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

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22 Respondent.

23 **FINDINGS OF FACT**

24 1. On or about September 26, 2012, Complainant Patti Bowers, in her official capacity
25 as the Executive Officer of the California Board of Accountancy, Department of Consumer
26 Affairs, filed Accusation No. AC-2012-21 against Marvin Louis Nicholls (Respondent) before the
California Board of Accountancy. (Accusation attached as Exhibit A.)

27 2. On or about August 2, 1974, the California Board of Accountancy (CBA) issued
28 Certified Public Accountant Certificate No. 20478 to Respondent. The Certified Public

1 Accountant Certificate was in full force and effect at all times relevant to the charges brought in
2 Accusation No. AC-2012-21 and expired on January 31, 2012. The Board has jurisdiction to
3 adjudicate this case per Business & Professions Code section 5109.

4 3. On or about October 8, 2012, Respondent was served by Certified and First Class
5 Mail copies of the Accusation No. AC-2012-21, Statement to Respondent, Notice of Defense,
6 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
7 and 11507.7) at Respondent's address of record which, pursuant to California Code of
8 Regulations, title 16, section 3, is required to be reported and maintained with the CBA.
9 Respondent's address of record was and is:

10 P.O. Box 93301

11 City of Industry, CA 91745

12 4. Service of the Accusation was effective as a matter of law under the provisions of
13 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
14 124.

15 5. Government Code section 11506 states, in pertinent part:

16 (c) The respondent shall be entitled to a hearing on the merits if the respondent
17 files a notice of defense, and the notice shall be deemed a specific denial of all parts
18 of the accusation not expressly admitted. Failure to file a notice of defense shall
constitute a waiver of respondent's right to a hearing, but the agency in its discretion
may nevertheless grant a hearing.

19 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
20 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
21 AC-2012-21.

22 7. California Government Code section 11520 states, in pertinent part:

23 (a) If the respondent either fails to file a notice of defense or to appear at the
24 hearing, the agency may take action based upon the respondent's express admissions
25 or upon other evidence and affidavits may be used as evidence without any notice to
respondent.

26 8. Pursuant to its authority under Government Code section 11520, the CBA finds
27 Respondent is in default. The CBA will take action without further hearing and, based on the
28 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as

1 taking official notice of all the investigatory reports, exhibits and statements contained therein on
2 file at the CBA's offices regarding the allegations contained in Accusation No. AC-2012-21,
3 finds that the charges and allegations in Accusation No. AC-2012-21, are separately and
4 severally, found to be true and correct by clear and convincing evidence.

5 9. Taking official notice of its own internal records, pursuant to Business and
6 Professions Code section 5107, it is hereby determined that the reasonable costs for Investigation
7 and Enforcement is \$18,620.44 as of November 16, 2012.

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9 **DETERMINATION OF ISSUES**

10 1. Based on the foregoing findings of fact, Respondent Marvin Louis Nicholls has
11 subjected his Certified Public Accountant Certificate No. 20478 to discipline.

12 2. The agency has jurisdiction to adjudicate this case by default.

13 3. The California Board of Accountancy is authorized to revoke Respondent's Certified
14 Public Accountant Certificate based upon the following violations alleged in the Accusation
15 which are supported by the evidence contained in the Default Decision Evidence Packet in this
16 case:

17 a. **Gross Negligence in the Practice of Public Accountancy** – Bus. & Prof. Code
18 section 5100, subdivision (c).

19 b. **Reports Failing to Conform to Professional Standards** – Bus. & Prof. Code
20 section 5062 in conjunction with Cal. Code of Regs., title 16, section 58, GAGAS 5.11(a), AU
21 508.08 (d) and (h), Office of Management and Budget (OMB) Circular A-133.520(b)(1)(i), A-
22 133.310(b)(3), A-133.315(b)(4), A-133.505(b) and A-133.505(d)(1)(vii).

23 c. **Insufficient Audit Documentation** – Bus. & Prof. Code section 5097, subdivision
24 (b) in conjunction with Generally Accepted Government Auditing Standards No. 4.19

25 d. **Unprofessional Conduct** – Bus. & Prof. Code section 5100, subdivision (e).

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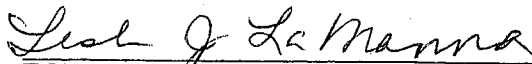
ORDER

IT IS SO ORDERED that Certified Public Accountant Certificate No. 20478, heretofore issued to Respondent Marvin Louis Nicholls, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on March 3, 2013.

It is so ORDERED February 1, 2013



FOR THE CALIFORNIA BOARD OF
ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

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DOJ Matter ID:LA2011505966

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. AC-2012-21

11 **MARVIN LOUIS NICHOLLS**
12 **P.O. Box 93301**
13 **City of Industry, CA 91745**

A C C U S A T I O N

14 **Certified Public Accountant Certificate No.**
20478

15 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
21 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

22 2. On or about August 2, 1974, the California Board of Accountancy issued Certified
23 Public Accountant Certificate Number 20478 to Marvin Louis Nicholls (Respondent). The
24 Certified Public Accountant Certificate was in full force and effect at all times relevant to the
25 charges brought herein and expired on January 31, 2012.
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JURISDICTION

3. This Accusation is brought before the California Board of Accountancy (CBA), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 5109 of the Code provides that the expiration, cancellation, forfeiture, or suspension of a license, practice privilege, or other authority to practice public accountancy by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of or action or disciplinary proceeding against the licensee, or to render a decision suspending or revoking the license.

STATUTORY PROVISIONS

5. Section 5100 states in pertinent part:

"After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

...

(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same or different engagements, for the same or different clients, or any combination of engagements or clients, each resulting in a violation of applicable professional standards that indicate a lack of competency in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052.

...

(e) Violation of Section 5097."

6. Section 5097, subdivision (b) of the Code states:

"Audit documentation shall contain sufficient documentation to enable a reviewer with relevant knowledge and experience, having no previous connection with the audit engagement, to

1 understand the nature, timing, extent, and results of the auditing or other procedures performed,
2 evidence obtained, and conclusions reached, and to determine the identity of the persons who
3 performed and reviewed the work.”

4 7. Section 5062 states:

5 “A licensee shall issue a report which conforms to professional standards upon completion
6 of a compilation, review or audit of financial statements.”

7 8 REGULATORY PROVISIONS

9 8. California Code of Regulations, title 16, section 58, states:

10 “Licensees engaged in the practice of public accountancy shall comply with all applicable
11 professional standards, including but not limited to generally accepted accounting principles and
12 generally accepted auditing standards.”

13 14 STANDARDS OF PRACTICE

15 9. Generally Accepted Government Auditing Standards (GAGAS) No. 3.50(b) – Quality
16 Control and Assurance states in pertinent part, that each audit organization performing audits or
17 attestation engagements in accordance with GAGAS must have an external peer review at least
18 once every 3 years.

19 10. GAGAS No. 3.55 – External Peer Review states, “Audit organizations performing
20 audits and attestation engagements in accordance with GAGAS must have an external peer
21 review performed by reviewers independent of the audit organization being reviewed at least once
22 every 3 years.”

23 11. GAGAS No. 4.19 – Audit Documentation states in pertinent part, “Under American
24 Institute of Certified Public Accountants (AICPA) standards and GAGAS, auditors must prepare
25 audit documentation in connection with each audit in sufficient detail to provide a clear
26 understanding of the work performed (including the nature, timing, extent, and results of audit
27 procedures performed), the audit evidence obtained and its source, and the conclusions reached.”

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12. GAGAS No. 5.11 – Deficiencies in Internal Control states:

“For all financial audits, auditors should report the following deficiencies in internal control:

a. Significant deficiency: a deficiency in internal control, or combination of deficiencies, that adversely affects the entity’s ability to initiate, authorize, record, process, or report financial data reliably in accordance with GAAP such that there is more than a remote likelihood that a misstatement of the entity’s financial statements that is more than inconsequential will not be prevented or detected.

b. Material weakness: a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected.”

13. AU 508.08 – The Auditor’s Standard Report states in pertinent part:

“The auditor’s standard report identifies the financial statements audited in an opening (introductory) paragraph, describes the nature of an audit in a scope paragraph, and expresses the auditor’s opinion in a separate opinion paragraph. The basic elements of the report are the following:

...

d. A statement that the audit was conducted in accordance with generally accepted auditing standards and an identification of the United States of America as the country of origin of those standards (for example, auditing standards generally accepted in the United States of America or U.S. generally accepted auditing standards)

...

h. An opinion as to whether the financial statements present fairly, in all material respects, the financial position of the Company as of the balance sheet date and the results of its operations and its cash flows for the period then ended in conformity with generally accepted accounting principles. The opinion should include an identification of the United States of America as the country of origin of those accounting principles (for example, accounting

1 principles generally accepted in the United States of America or U.S. generally accepted
2 accounting principles)”

3 14. Office of Management and Budget (OMB) Circular A-133.520(b)(1)(i) states: “The
4 auditor shall identify the larger Federal programs, which shall be labeled Type A programs. Type
5 A programs are defined as Federal programs with Federal awards expended during the audit
6 period exceeding the larger of: \$300,000 or three percent (.03) of total Federal awards expended
7 in the case of an auditee for which total Federal awards expended equal or exceed \$300,000 but
8 are less than or equal to \$100 million.”

9 15. OMB Circular A-133.310(b)(3) states: “The auditee shall also prepare a schedule of
10 expenditures of Federal awards for the period covered by the auditee’s financial statements ... At
11 a minimum, the schedule shall: Provide total Federal awards expended for each individual
12 Federal program and the CFDA number or other identifying number when the CFDA information
13 is not available.”

14 16. OMB Circular A-133.315(b) states:

15 “Summary of schedule of prior audit findings. The summary schedule of prior audit
16 findings shall report the status of all audit findings included in the prior audit’s schedule of
17 findings and questioned costs relative to Federal awards. The summary schedule shall also
18 include audit findings reported in the prior audit’s summary schedule of prior audit findings
19 except audit findings ... no longer valid or not warranting further action in accordance with
20 paragraph (b)(4) of this section.

21 ...

22 (b)(4) When the auditee believes the audit findings are no longer valid or do not warrant
23 further action, the reasons for this position shall be described in the summary schedule ...”

24 17. OMB Circular A-133.505(b) states: “The auditor’s report(s) may be in the form of
25 either combined or separate reports and may be organized differently from the manner presented
26 in this section. The auditor’s report(s) shall state that the audit was conducted in accordance with
27 this part and include the following: A report on internal controls related to the financial
28 statements and major programs. This report shall describe the scope of testing of internal control

1 and the results of the tests, and, where applicable, refer to the separate schedule of findings and
2 questioned costs ...”

3 18. OMB Circular A-133.505(d)(1)(vii) states, in pertinent part that the auditor’s report(s)
4 shall include a schedule of findings and questioned costs which shall include an identification of
5 major programs.

6 7 COST RECOVERY

8 19. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
9 administrative law judge to direct a licentiate found to have committed a violation or violations of
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
11 enforcement of the case.

12 20. Section 5107, subdivision (a), of the Code states:

13 “The executive officer of the board may request the administrative law judge, as part of the
14 proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate
15 found to have committed a violation or violations of this chapter to pay to the board all reasonable
16 costs of investigation and prosecution of the case, including, but not limited to, attorneys’ fees.
17 The board shall not recover costs incurred at the administrative hearing.”

18 19 BACKGROUND FACTS

20 21. On or around May 13, 2009, the Office of the Inspector General notified the Board of
21 a “Single Audit” report, prepared and issued by Marvin Louis Nicholls (Respondent), of
22 Redwood Valley Reservation (RVR) financial statements for the year ending December 31, 2007.

23 22. Upon further review of RVR reports for the years ending December 31, 2007 and
24 December 31, 2008, the Board found that Respondent’s RVR reports did not meet the reporting
25 standards and requirements in the following ways:

26 a. The “Schedule of Findings and Questioned Costs – Summary of Auditor’s Results”
27 disclosed \$500,000 as the threshold in the report. Per OMB Circular A-133.520(b)(1)(i), the
28 threshold used to distinguish between type A and type B programs should be the larger of

1 \$300,000 or three percent (.03) of the total annual expensed Federal awards for an auditee with
2 total awards expensed of at least \$300,000 and up to \$100 million. The appropriate threshold for
3 RVR was \$300,000.

4 b. The Schedule of Expenditures of Federal Financial Assistance (SEFFA) lists multiple
5 Catalog of Federal Domestic Assistance (CFDA) numbers which do not exist in OMB Circular
6 A-133.310(b)(3).

7 c. SEFFA does not include notes describing the significant accounting policies used in
8 preparing the schedule as required by OMB Circular A-133.315(b)(4).

9 d. The Summary of Auditor's Results did not include an identification of major
10 programs as required by OMB Circular A-133.505(d)(1)(vii).

11 e. The Respondent used the term "reportable condition" to describe control deficiencies
12 in internal control over financial reporting and in internal control over compliance in the
13 Summary of Auditor's Result. Under GAGAS 5.11 auditors should report significant deficiencies
14 in internal control for all financial audits.

15 f. On the Data Collection Form, Part II (2), the Respondent checked "yes" to indicate
16 that an explanatory paragraph was included in the audit report regarding the "going concern."
17 However, the Independent Auditor's Report did not include a "going concern" explanatory
18 paragraph.

19 g. The Independent Auditor's Report did not identify the United States of America
20 (U.S.) as the country of origin of generally accepted auditing standards (GAAS) and generally
21 accepted accounting principles (GAAP) as prescribed under AU 508.08(d) and (h). Further, the
22 Report on Compliance and on Internal Control Over Financial Reporting Based on an Audit of
23 Financial Statements Performed in Accordance With Government Auditing Standards and the
24 Report on Compliance With Requirements Applicable to Each Major Program and on Internal
25 Control Over Compliance in Accordance With OMB Circular A-133 did not identify the U.S. as a
26 country of origin of GAAS.

27 h. As the revenue of RVR was less than \$10 million, RVR has been subject to the
28 reporting requirements under the Government Accounting Standards Board (GASB) Statement

1 No. 34 beginning June 15, 2003. However, although RVR has not implemented GASB Statement
2 No. 34, the Respondent issued an unqualified opinion on the financial statements.

3 23. The Respondent admits that he has never had a peer review performed.

4 24. The audit packages were deficient in accordance with standards in many other
5 respects, including, but not limited to:

6 a. No written management representations.

7 b. No identification of audit work paper preparer.

8 c. Not in compliance with GAGAS No. 4.19 pertaining to "Audit Documentation". The
9 audit file contained only data reconciliation and summarization. There was very little description
10 of audit procedures performed, including the nature, timing, extent and results of audit
11 procedures.

12 13 **FIRST CAUSE FOR DISCIPLINE**

14 (Gross Negligence In the Practice of Public Accountancy)

15 25. Respondent is subject to disciplinary action under section 5100, subdivision (c) in
16 that Respondent committed acts constituting gross negligence or repeated negligent acts in the
17 performance of an audit for RVR for the years ending December 31, 2007 and December 31,
18 2008. Complainant incorporates by reference, paragraphs 21 – 24 and all subparagraphs as if
19 fully set forth herein.

20 21 **SECOND CAUSE FOR DISCIPLINE**

22 (Reports Failing to Conform to Professional Standards)

23 26. Respondent is subject to disciplinary action under section 5062 in conjunction with
24 Cal. Code of Regs., title 16, section 58, GAGAS 5.11(a), AU 508.08 (d) and (h), Office of
25 Management and Budget (OMB) Circular A-133.520(b)(1)(i), A-133.310(b)(3), A-133.315(b)(4),
26 A-133.505(b) and A-133.505(d)(1)(vii) in that Respondent failed to issue a report which
27 conforms to professional standards including generally accepted accounting principles and
28

1 generally accepted auditing standards. Complainant incorporates by reference, paragraphs 21 - 24
2 and all subparagraphs as if fully set forth herein.

3
4 **THIRD CAUSE FOR DISCIPLINE**

5 (Insufficient Audit Documentation)

6 27. Respondent is subject to disciplinary action under section 5097, subdivision (b) in
7 conjunction with Generally Accepted Government Auditing Standards No. 4.19 in that
8 Respondent failed to provide sufficient documentation to enable a reviewer with relevant
9 knowledge and experience to understand the nature, timing, extent, and results of the auditing or
10 other procedures performed, evidence obtained, and conclusions reached. Complainant
11 incorporates by reference, paragraphs 21 - 24 and all subparagraphs as if fully set forth herein.

12
13 **FOURTH CAUSE FOR DISCIPLINE**

14 (Unprofessional Conduct)

15 28. Respondent is subject to disciplinary action under section 5100, subdivision (e) in
16 that Respondent committed acts constituting unprofessional conduct by violating section 5097,
17 subdivision (b). Complainant incorporates by reference, paragraphs 21 - 24 and all subparagraphs
18 as if fully set forth herein.

19
20 **PRAYER**

21 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
22 and that following the hearing, the California Board of Accountancy issue a decision:

23 1. Revoking or suspending or otherwise imposing discipline upon Certified Public
24 Accountant Certificate Number 20478, issued to Marvin Louis Nicholls;

25 2. Ordering Marvin Louis Nicholls to pay the California Board of Accountancy the
26 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
27 Professions Code section 5107;

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3. Taking such other and further action as deemed necessary and proper.

DATED: 9/26/2012 Patti Bowers

PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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